



UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548



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Kirkpatrick
PLT

OFFICE OF GENERAL COUNSEL

IN REPLY REFER TO: B-194105 (THK)

NOVEMBER 1, 1979

Mr. Raymond J. Shallbetter
9872 Stanford Avenue
Garden Grove, California 92641

Dear Mr. Shallbetter:

Exclusion From Overtime of

By letter of January 23, 1979, you question whether your employing agency, the Naval Weapons Station, Seal Beach, California, should exclude from its computation of overtime pay under the Fair Labor Standards Act (FLSA) hours of paid absence for a holiday and annual leave. Your letter suggests that such hours of paid absence are excludable for the purpose of determining whether an employee worked in excess of 40 hours in a workweek, but not for the purpose of computing the amount of his FLSA overtime entitlement. In accordance with Attachments 4 and 5 to Federal Personnel Manual Letter 551-1, May 15, 1974, copies enclosed, such hours must be excluded to determine whether an employee actually worked in excess of 40 hours, as well as in computing the amount of his overtime pay under the FLSA. It appears that the advice you were given in this regard by the Naval Weapons Station's Comptroller is correct.

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For your information we are enclosing a copy of our decision, 54 Comp. Gen. 371 (1974), which deals with the relationship between an employee's entitlements to overtime pay under the FLSA and title 5 of the U.S. Code. The decisions refer to FPM Letter 551-1, supra, and specifically recognizes that there are differences between an employee's entitlements under the two laws. One of those differences is that hours of paid absence are includable for the purpose of determining overtime entitlement under title 5, but are excluded under the FLSA. If paid leave were included, the FLSA computation would exceed the amount to which an employee is entitled under 29 U.S.C. § 207(c), create a faulty comparison between FLSA and title 5 compensation, and erroneously provide pay exceeding that computed by either method.

Concerning delayed payment for any FLSA overtime in excess of that computed under 5 U.S.C. § 5542, we understand that minimal delay is administratively required until the excess amount is included

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in the pay check for the pay period following that in which the overtime is earned.

The above matters are further discussed in the Naval Weapons Station administrative report of August 21, 1979, a copy of which you have received. We believe that the administrative report and this letter provide the information you need.

Sincerely yours,



Robert L. Higgins
Assistant General Counsel

Enclosures - 3

cc: Charles F. Gallagher, Comptroller
Department of the Navy
Naval Weapons Station
Seal Beach, California 90740